



May 28, 1999

Ms. Linda Wiegman
Supervising Attorney
Texas Department of Health
1100 West 49th Street
Austin, Texas 78756

OR99-1484

Dear Ms. Wiegman:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 124480.

The Department of Health (the "department") received a request for a variety of information concerning a psychiatric hospital. As the requestor, who apparently is the attorney for two patients and their families, provided release forms for medical and other records concerning the two named patients, it is our understanding that their information is not at issue. We understand you to assert that the other information at issue is protected by common-law privacy, by provisions of chapter 611 of the Health and Safety Code, and by the Medical Practice Act (the "MPA"), article 4495b of Vernon's Texas Civil Statutes, in conjunction with section 552.101 of the Government Code.

You de-identified some of the records in order to protect the identities of the individuals who were patients at the psychiatric hospital. Information must be withheld from public disclosure under a common-law right of privacy when the information is (1) highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The type of information the supreme court considered intimate and embarrassing in *Industrial Foundation* included information relating to sexual assault, pregnancy, psychiatric treatment of emotional and mental illness, and attempted suicide. *Id.* We agree that some of the requested information is protected under the common-law right of privacy. We have noted in the documents where de-identification is appropriate to protect the identity of the patients and former patients. We note that to de-identify as to the patients or former patients, you must redact the names, medical record numbers, and home addresses and

telephone numbers, where appropriate. We also note that once information is de-identified to protect an individual's privacy, there is no need to redact further unless the information is otherwise confidential by law. The documents are marked to show where we agree with your markings and where we disagree with them.

We agree that the documents at issue include medical and mental health records. Section 5.08 of V.T.C.S. article 4495b, the Medical Practice Act (the "MPA"), provides:

(b) Records of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician are confidential and privileged and may not be disclosed except as provided in this section.

(c) Any person who receives information from confidential communications or records as described in this section other than the persons listed in Subsection (h) of this section who are acting on the patient's behalf may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Section 5.08(j)(3) also requires that any subsequent release of medical records be consistent with the purposes for which a governmental body obtained the records. Open Records Decision No. 565 at 7 (1990). Thus, access to the medical records at issue is not governed by chapter 552 of the Government Code, but rather provisions of the MPA. Open Records Decision No. 598 (1991). Information that is subject to the MPA includes both medical records and information obtained from those medical records. *See* V.T.C.S. art. 4495b § 5.08(a), (b), (c), (j); Open Records Decision No. 598 (1991).

Chapter 611 of the Health and Safety Code provides for the confidentiality of records created or maintained by a mental health professional. Section 611.002(a) reads as follows:

Communications between a patient and a professional, and records of the identity, diagnosis, evaluation, or treatment of a patient that are created or maintained by a professional, are confidential..

Section 611.001 defines a "professional" as (1) a person authorized to practice medicine, (2) a person licensed or certified by the state to diagnose, evaluate or treat mental or emotional conditions or disorders, or (3) a person the patient reasonably believes is authorized, licensed, or certified. Sections 611.004 and 611.0045 provide for access to mental health records only by certain individuals. *See* Open Records Decision No. 565 (1990).

We agree generally with your markings concerning medical records, information obtained from medical records, and mental health records, and have so noted on the documents at issue.

We have marked one complaint that is confidential in its entirety and another that may be confidential under chapter 261 of the Family Code. Subsection (a) of section 261.201 of the Family Code provides:

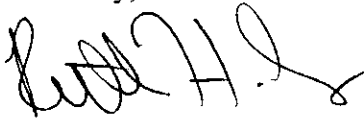
(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with . . . [the Family] code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under . . . chapter [261 of the Family Code] and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under . . . chapter [261 of the Family Code] or in providing services as a result of an investigation.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,



Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/ch

Ref: ID# 124480

Encl. Submitted documents

cc: Mr. Michael E.J. Archuleta, J.D., M.D.
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(w/o enclosures)